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U.S. DIST. CT. COURT
DISTRICT OF UTAH

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International Business Machines Corporation*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DEFENDANT/COUNTERCLAIM
PLAINTIFF IBM'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS ON SCO'S
PRIVILEGE LOG**

(ORAL ARGUMENT REQUESTED)

Civil No.: 2:03CV-0294DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to Rule 26 of the Federal Rules of Civil Procedure, Defendant/Counterclaim-Plaintiff International Business Machines Corporation ("IBM"), through counsel, hereby moves this Court for an Order compelling Plaintiff/Counterclaim-Defendant The SCO Group, Inc. ("SCO") to produce all documents listed on its privilege log that were created by or for third parties, including AT&T Corporation ("AT&T"), UNIX System Laboratories ("USL"), Novell, Inc. ("Novell"), and The Santa Cruz Operation, Inc. ("Santa Cruz").

SCO claims that documents created by or for four entirely different companies, AT&T, USL, Novell, and Santa Cruz, are privileged as to SCO. Although SCO has nowhere articulated the precise basis for such a claim, SCO apparently contends that it may assert an attorney-privilege belonging to other companies still in existence because these companies, like SCO, once owned certain of the UNIX assets at issue in this and other litigation. SCO cannot properly claim attorney-client privilege over documents originating with other corporations and their attorneys. The transfer of assets from one entity to another does not transfer the attorney-client privilege as well. Instead, control of the entity possessing the privileges must pass to the purchaser for the privilege to pass. It is undisputed that SCO does not control any of the corporations whose privilege it now claims. To the extent documents that were once privileged as to these corporations have been transferred to SCO, any privilege in them has been waived. For the foregoing reasons, and as set forth in further detail in IBM's memorandum in support of its motion to compel production of privileged documents, IBM respectfully requests that this Court order SCO to produce to IBM all documents on its privilege log created by or for third parties.

CERTIFICATION OF COMPLIANCE WITH RULE 37(a)(2)(A)

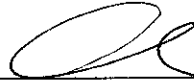
IBM has attempted in good faith to resolve this issue without intervention by the Court, but it has been unable to do so. On April 11, 2005, IBM objected to SCO's withholding from production all documents created by or for third parties as listed on SCO's privilege log. In

addition, in a letter dated September 2, 2005, IBM asked that SCO provide the basis for withholding such documents. SCO responded by stating only that it had "properly" asserted the privilege over documents on its privilege log that were created by or for attorneys for AT&T, USL, Novell, and Santa Cruz. SCO has continued to withhold such documents from production.

IBM further respectfully requests oral argument on this motion.

DATED this 26th day of September, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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